IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.207 OF 2005
IN
SUMMONS FOR JUDGMENT NO.397 OF 2003
IN
SUMMARY SUIT NO.4043 OF 2002

Smt.Rashmi Nitin Shah ..Appellant.
(Orig.Deft.No.3)

Vs.

1. Jayantilal Sakariya ..Respondent
(Orig.Plaintiff)
2. Pratham Jewellers
3. Rasiklal Nemchand Shah ..Respondents
(Orig.Respdts.1&2)

Mr.C.Ardeshir i/b.M/s.Madekar & Co., Advocate for the Appellant.

Mr.R.S.Champawat for Respondent No.1.

CORAM: A.P.SHAH AND
S.J.VAZIFDAR, JJ.

DATED: 4TH APRIL, 2005

P.C. :

By consent, the Appeal is admitted and heard finally.

2. This is an Appeal by Defendant No.3 against the order of the learned single Judge granting her leave to defend the above suit conditional upon her depositing in Court a sum of Rs.3,00,000/- within eight weeks.

3. The above suit is filed by the first Respondent against the second and third Respondents and the Plaintiff who are Defendant Nos.1 to 3 respectively to recover a sum of Rs.6,06,121/- with interest at 24% per annum. The first Respondent's case is that Defendant No.2/Respondent No.3 approached him and represented that they were in need of certain jewellery; that Respondent No.1 delivered certain jewellery on approval basis agreeing that if the same was approved the same would be retained by them and the first Respondent could accordingly raise a bill for the same. The first Respondent's case is that he accordingly delivered certain jewellery of the value of Rs.6,06,121/-. The jewellery was retained by the Defendant after having approved the same and that the first Respondent issued a bill dated 23.7.2001 for the said amount.

4. Whatever be the case against the second Defendant i.e. Respondent No.3, in our opinion, the Appellant is entitled to unconditional leave.

5. Prima-facie, it appears to us that the transaction was entered into by the first Respondent/Plaitniff with the second Defendant and

not with the Appellant. This is clear from the bill itself which is expressly addressed to the third Respondent and not to Respondent No.2/Defendant No.1 or the Appellant/Defendant No.3. The fact that in the bill below the name of the Appellant are the words: "C/o.Pratham Jewellers....." i.e. the second Respondent makes no difference. The same only indicates the address of the third Respondent. In fact, it supports the case of the Appellant that she was not a party to the transaction.

6. The Appellant's case is further supported by the statement of account of Respondent No.3 in the books of the Plaintiff/Respondent No.1 himself which reads thus :

"23 Dr.RASIKLAL NEMCHAND SHAH
Bill No.40 GMS.1456.240 Sale 6,06,121.00"

Thus, the entry specifically pertains to the liability of Respondent No.3 and not of Respondent No.2 of the Plaintiff.

7. In these circumstances, prima-facie, it appears

that there is no liability qua the Appellant. The impugned order is therefore set aside. The Appellant is granted unconditional leave to defend the suit.

8. Nothing stated in this order shall affect the rights of the Plaintiff qua Respondent No.3. There shall be no order as to costs.